

CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
ARTICLE 25. HEARINGS

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Personnel Administration (DPA) proposes to adopt, amend, or renumber regulations as described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

PUBLIC HEARING

DPA will hold a public hearing on **October 8, 2003, starting at 9:00 a.m.**, at 1515 "S" Street, First Floor, American Room, Sacramento, CA 95814. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. DPA requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DPA. The written comment period closes at **5:00 p.m. on October 6, 2003**. DPA will consider only comments received at DPA by that time. Please submit comments to:

Myrna Gregory, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Authority

Sections 19815.4(d) and 19816, Government Code (GC)

GC Section 19815.4(d) gives authority to DPA to formulate, adopt, amend, or repeal rules and regulations. GC Section 19816 gives DPA the authority to succeed the State Personnel Board (SPB) in those duties, purposes, responsibilities, and jurisdiction previously exercised by SPB with respect to the administration of salaries, hours, and other personnel-related matters, training, performance evaluations, layoffs, and grievances. The existing provisions rely on the authority set forth in these two statutes. The new provisions also rely upon the same authority.

Reference

Section 19815.4, GC

The existing reference for each section in Article 25, Title 2. Administration, California Code of Regulations (CCR), is GC Section 18670. GC Section 18670 provides authority for SPB to hold hearings and make investigations regarding civil service matters. DPA's power to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction is set forth at GC Section 19815.4. The Director's authority to delegate this power is also set forth at GC Section 19815.4. This section should be the primary reference for each section of Article 25; and the incorrect reference to SPB's authority should be deleted.

Sections 11400 through 11470.50, GC

The Administrative Procedures Act (APA) regulates formal and informal administrative hearings by State agencies. GC Sections 11400 through 11470.50, contained within the APA, are applicable specifically to DPA's administrative hearing processes. Therefore, they should be added as reference for amended CCR Section 599.898 dealing with administrative adjudication provisions.

Sections 19996.2 and 19842.5, GC - Requests for Reinstatement After Automatic Resignation.

Section 19997.14, GC - Appeals from Layoff and Demotions/Transfers in Lieu of Layoff.

Section 19994.3, GC - Protests of Geographic and Non-Geographic Transfer.

Section 19996.1, GC - Petitions to Set Aside Resignation.

Sections 19832 and 19836, GC - Appeals from Denial of Merit Salary Adjustment.

Sections 19992 through 19992.14, GC - Appeals from Performance Appraisal.

Section 19859, GC - Appeals from Denial of Sick Leave.

Sections 19818.16 and 19818.8, GC - Appeals from Denial of Out-of-Class Claim.

The above listed sections of the GC specifically identify the appeal rights for each type of appeal which generates an investigation or hearing at DPA. They are added as a reference for new CCR Section 599.906. Hearings and Decisions.

***Johnston v. DPA* (1987) 191 Cal.App.3d 1218**

The Court in ***Johnston v. DPA*** determined that the right to appeal a transfer not only applied to transfers requiring relocation, but also to nongeographic transfers. ***Johnston v. DPA*** is added as a reference for new CCR Section 599.906. Hearings and Decisions.

***Bidwell v. State of California* (1985) 164 Cal.App.3d 213**

***Gonzalez v. SPB* (1977) 76 Cal.App.3d 364**

The Court in ***Bidwell v. State of California*** determined that there can be no exception to the 30-day time limit for filing a petition to set aside a resignation. Therefore, the exception for good cause, set forth in CCR Section 599.904. Time of Filing, is not applicable to petitions to set aside resignation. The Court in ***Gonzalez v. SPB*** defines "good cause" for a late appeal. Both are added as reference for CCR Section 599.904. Time of Filing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPA has authority to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction. Shortly after its creation, DPA adopted regulations implementing its authority to consider appeals and hold evidentiary hearings on nonmerit issues. The regulations, which are set forth at Title 2, Article 25, Hearings, were adopted September 6, 1983. They define terms, identify the elements of a proper appeal, and set forth time limits for filing appeals, dismissing appeals, and finalizing decisions on appeal.

The proposed changes clarify the parties entitled to appeal under DPA's process and the types of appeals which merit investigation and/or hearing. They formalize two longstanding practices of DPA, which are as follows: (1) DPA considers an appeal filed on the date it is postmarked or received, whichever is earlier; and (2) DPA allows an employee or appointing power to file a request for rehearing within 30 days following a decision. The latter provision has already been adopted as a regulation applicable to excluded employees. (See CCR Section 599.859. Grievance and Appeal Procedure—Excluded Employees.)

The proposed changes also adopted those portions of the APA effective July 1, 1997, applicable to State agencies holding administrative hearings. They also reference and incorporate the following case law: ***Bidwell v. State of California*** (1985) 164 Cal.App.3d 213 (limiting the time for filing a petition to set aside a resignation to the statutory time frame); ***Gonzalez v. DPA*** (1977) 76 Cal.App.3d 364 (defining what constitutes good cause for a late appeal); and ***Johnston v. DPA*** (1987) 191 Cal.App.3d 1218 (expanding the right to appeal nongeographic transfers as well as geographic transfers).

Finally, the general reference for each section has been changed from GC Section 18670 to GC Section 19815.4 to more properly reflect DPA's authority. GC Section 18670 vests SPB with authority to hold hearings and make investigations regarding civil service matters. GC Section 19815.4 vests DPA with authority to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction.

These regulatory changes only apply to State civil service employees and their appointing authorities and only come into play when an employee has appealed a nonmerit action affecting his/her employment. Therefore, DPA does not expect any significant fiscal or other impact, as set forth below.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts:

DPA has determined that since these rules pertain only to State civil service employees, they do not impose a mandate on local agencies or school districts.

Cost or savings to any State agency:

The changes to Article 25 are not anticipated to add any costs to State agencies since they merely implement existing laws and procedures applicable to DPA's appeal and hearing processes.

DPA has also determined that this proposal does not:

- Cause costs or savings for local agencies or school districts;
- Impose nondiscretionary costs or savings on local agencies; or
- Cause costs or savings in federal funding to the State.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:

The regulations covered by this proposal have no impact on small businesses because they apply only to State civil service employees.

Cost impacts on a representative private person or business:

DPA has determined that this proposed rulemaking action does not have a significant adverse economic impact on California business. The rulemaking action does not impact private persons in this State. Specifically, it will not:

- Affect the ability of California businesses to compete with businesses in other states.
- Create or eliminate jobs in California.
- Create, expand, or eliminate businesses in California.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing impact:

This rulemaking action will not affect housing costs.

CONSIDERATION OF ALTERNATIVES

In order to take this action, DPA must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out this rulemaking action or would be as effective and less burdensome to the affected persons than this action.

DPA invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Myrna Gregory, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814
Telephone: (916) 322-3748

The back-up contact person for these inquiries is:

Sydney Perry, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814
Telephone: (916) 324-2763

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPA will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Myrna Gregory at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, DPA may adopt the proposed regulations substantially as described in this notice. If DPA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before adopting the regulations as revised. Please send requests for copies of any modified regulations to the attention of Myrna Gregory at the address indicated above. DPA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Myrna Gregory at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through DPA's website at www.dpa.ca.gov.

PROPOSED REGULATORY ACTION

DPA intends to amend the following regulations set forth at Subchapter 1, Chapter 3 of Title 2 of the CCR Article 25 (Article 25):

- Section 599.903. Appeal
- Section 599.904. Time of Filing

DPA intends to renumber CCR Section 599.898. Respondent as CCR Section 599.897, and amend.

DPA intends to renumber CCR Section 599.906. Dismissal of Appeals not Brought to Hearing as CCR Section 599.908, and amend.

DPA intends to adopt the following new regulations at Article 25:

- Section 599.893. Scope of Article
- Section 599.898. Administrative Adjudication Provisions
- Section 599.906. Hearings and Decisions
- Section 599.907. Rehearing
- Section 599.909. Reserved

DPA intends to amend the reference for each of the amended sections and the following additional sections:

- Section 599.894. Definitions
- Section 599.895. Appeal
- Section 599.896. Appellant
- Section 599.905. Answer
- Section 599.910. Decision Becomes Final When